Supreme Court, U.S.
FILED
DEC 14
CLERK

No. 98-769

In The
Supreme Court Of The United States
October Term, 1998

AUGUSTUS J. SIMMONS,
Petitioner
v.
HORACE B. WETHERALL, ET AL.
Respondents

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF CONNECTICUT

BRIEF IN OPPOSITION FOR RESPONDENTS CONNECTICUT DEPARTMENT OF TRANSPORTATION AND CONNECTICUT COMMISSIONER OF TRANSPORTATION (WITH ATTACHED APPENDIX)

PAUL K. PERNEREWSKI
Assistant Attorney General
State of Connecticut
2800 Berlin Turnpike
P.O. Box 317546
Newington, CT 06131-7546
(860) 594-2531

RICHARD BLUMENTHAL
ATTORNEY GENERAL
OF CONNECTICUT

* BRIAN J. COMERFORD
Assistant Attorney General
Office of the Attorney General
55 Elm Street, P.O. Box 120
Hartford, CT 06141-0120
(860) 808-5090
**Counsel of Record*

Attorneys for Respondents

TABLE OF CONTENTS

Table Of Authorities ii
Statement Of The Case 1
Reasons For Denial Of The Petition 3
Argument 3
Conclusion 5
Appendix Table Of Contents ..... A

TABLE OF AUTHORITIES

Cases:

Simmons v. Wetherall, 180 Conn. 587, 430 A.2d 1296 (1980) 1, 2, 5

Simmons v. Wetherall, No. A.C. 10918, Order April 3, 1992 2

Simmons v. Wetherall, No. PSC-91-0549 2

Simmons v. Wetherall, CV 70-163875, Judicial District of Hartford 1, 3

Simmons v. Wetherall, No. A.C. 10918 Order April 3, 1992; Pet. Cert. Denied Supreme Court, No. PSC-91-0549, May 21, 1992 4

Simmons v. Frankel, U.S. Court of Appeals, Second Circuit No. 92-6208 ORDER - Feb. 23, 1993 4

OtherAuthorities:

Connecticut Practice Book Sec. 4184 4

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1998

Augustus J. Simmons
Petitioner(s)

v.

Horace B. Wetherall, et al.
Respondent(s)

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF
THE STATE OF CONNECTICUT

BRIEF IN OPPOSITION FOR RESPONDENTS
CONNECTICUT DEPARTMENT OF
TRANSPORTATION AND CONNECTICUT
COMMISSIONER OF TRANSPORTATION
(WITH ATTACHED APPENDIX)

STATEMENT OF THE CASE

This is yet another in along series of actions between the parties and others going back to the year 1963. All these legal actions concerned title to the same three parcels of land situated in the Town of East Granby at the end of Runway 6/24 at the State-owned Bradley International Airport. On January 4, 1978, a final judgment by stipulation of five reopened and consolidated superior Court cases seemed to finally end the previous years of litigation (*Simmons v. Wetherall*, Judgment, Superior Court Docket No. CV 70-163875) (App. A-1).

The Petitioner, represented by counsel and appearing *pro se*, agreed to convey the subject parcels to the State for $385,600. The petitioner subsequently refused to accept the agreed upon compensation, and the State secured a Supplemental Judgment (June 2, 1978) which reaffirmed the January 4, 1978 judgment and vested title to the three parcels in the State and ordered the State to deposit with the Clerk of the Superior Court $385,600 on the Plaintiff's behalf (App. A-6). In 1980, the Connecticut Supreme Court recognized the validity of this stipulated final judgment in *Simmons v. Wetherall,* 180 Conn. 587, 430 A.2d 1296 (1980).

Not content to accept the 1980 final decision of this Supreme Court, the petitioner, by counsel and/or *pro se*, has initiated a series of nineteen state or federal court actions since 1981, all against the State and at times including other defendants.

All of these cases sought in some form or fashion to reverse and overturn the 1978 judgments which were sustained in 1980 by the Connecticut Supreme Court. The chart of litigation prepared by counsel for the Respondents as an aid to the Court (App. A-17) highlights the course of

litigation pursued by the petitioner since the Connecticut Supreme Court's 1980 decision in *Simmons v. Wetherall,* supra.

On April 3, 1992, the Connecticut Appellate Court entered an ORDER enjoining the petitioner from filing appeals or other pleadings in the Appellate Court relating to *Simmons v. Wetherall*, 180 Conn. 587. (*Simmons v. Wetherall*, No. A.C. 10918, Order April 3, 1992, Petition, App. 18). On May 21, 1992, the Connecticut Supreme Court denied the petitioner's Petition For Certiorari to Appeal the 1992 Appellate Court order. (*Simmons v. Wetherall*, No. PSC-91-0549, App. A-27).

The matter presently before the Court arose when the petitioner wrote on January 3, 1997 to the Honorable Marshall K. Berger, Jr., Judge, Hartford Superior Court for resolution of certain motions and filings. (Petition App.5). On January 31, 1997, the Honorable John V. Langerbach, Administrative Judge, Hartford Superior Court, wrote the Petitioner, "In light of the previous rulings in this matter no further hearings will be scheduled as requested in your letter." (Petition App. 9).

On May 8, 1998, in three pending criminal cases, Nos. CR97-106221, CR97-10104930, CR97-0105048, Mr. Simmons filed a "Motion to Disqualify, Dismiss, "Pack the Bags" of the State Attorney's Office Who Are - or Represent - the World Record Trespassers of Thirty-Five (35) Years - and Counting, from Execution Vid Warrants upon Additional Trespassing." (Petition, App. 20). On July 17, 1998, under caption of *Simmons v. Wetherall*, CV 70-163875, Petitioner filed a "Motion to Dismiss for *Fraud, Duress, Deceit, Coercion Rule 1.16* ReDismissing/Discharges." (Petition, App. 10).

The petitioner filed, on August 5, 1998, in the Connecticut Supreme Court a "Motion to the Supreme Court for Permission to File Motion to Dismiss, Decress of Private Counsel Acting as 'the Court,' Denied by the Court Below Due to Previous Rulings by the Supreme Court in *Simmons v. Wetherall*, 180 Conn. 587." (Petition, App.2). On September 15, 1998, the Connecticut Supreme Court entered an order dismissing the petitioner's August 5, 1998 Motion. (Petition, App. 1). It is that order of the Connecticut Supreme Court which is the subject of the instant Petition for Writ of Certiorari.

REASONS FOR DENIAL OF THE PETITION

The Respondents respectfully submit that there are no special or important reasons to support the petition. This is not a case in which the Connecticut Supreme Court has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States Court of Appeals. Nor is it a case which the Connecticut Supreme Court has decided an important question of federal law that should be decided by this Court or in a way that conflicts with relevant decision of this Court. (See Rule 10, Supreme Court Rules).

ARGUMENT

In April, 1992, the Connecticut Appellate Court, exercising its authority pursuant to the Connecticut Practice Book Sec. 4184, imposed fair, appropriate and reasonable sanctions against the petitioner. These sanctions enjoined the petitioner from the further initiation of frivolous and

wasteful appeals or other proceedings in the Appellate Court (*Simmons v. Wetherall*, No. A.C. 10918 Order April 3, 1992; Pet. Cert. Denied Supreme Court, No. PSC-91-0549, May 21, 1992).[1/]

In filing the various motions subject to this Petition, the Petitioner clearly, intentionally and flagrantly violated the valid and outstanding Appellate Court injunction. The actions taken by the Connecticut Superior Court and the Connecticut Supreme Court in dismissing the motions were the correct and decisive action, given the thirty-year history of this matter and the extraordinary judicial patience that has been displayed and exercised over the last eighteen

---

1/ The Petitioner is under a similar prohibition in Federal Court. (*Simmons v. Frankel, et al.*, No. 92-6208, Feb. 23, 1993) (App. A-29). The Court Order stated: in part:

> Not dissuaded by the final judgment granting title of the disputed real property to the State of Connecticut, Simmons continued to pursue the issue. Simmons filed seven state and five federal proceedings after the 1978 stipulation was certified. Then in a 1988 order, Judge Cabranes enjoined Simmons from filing "any state or federal claims in any federal court against any of the defendants named in the complaint in this lawsuit if such lawsuit related to his alleged ownership" of the disputed real property. Affirming Judge Cabrane's order in all respects, this Court warned that any violation of that injunction could be punished as contempt of court and imposed double court costs against Simmons. *Simmons v. Burns*, No. 88-6093 (2d Cir. Oct. 5, 1988) (unpublished summary order).

App. A-31to A-32.

years since the Connecticut Supreme Court rendered its decision in *Simmons v. Wetherall*, 180 Conn. 587 (1980).

CONCLUSION

Based upon the foregoing, it is clear that the petitioner has not established any basis upon which this Court, in its discretion, should grant review. Accordingly, it is respectfully urged that the petition be denied.

Respectfully submitted,

RICHARD BLUMENTHAL
ATTORNEY GENERAL
STATE OF CONNECTICUT

*Brian J. Comerford
Assistant Attorney General
55 Elm Street
P.O. Box 120
Hartford, CT 06141-0120
Tel. No. (860)-808-5090

*Counsel of Record

Paul K. Pernerewski
Assistant Attorney General
State of Connecticut
2800 Berling Turnpike
P.O. Box 317546
Newington, CT 06131-7546
Tel. No. (860) 594-2531

Attorneys for Respondents

No. 98-769

In The

Supreme Court Of The United States

October Term, 1998

AUGUSTUS J. SIMMONS,

Petitioner

v.

HORACE B. WETHERALL, ET AL.

Respondents

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF CONNECTICUT

APPENDIX TO BRIEF IN OPPOSITION

APPENDIX TABLE OF CONTENTS

Page

Superior Court, Docket No.
CV 70-163875
Judgment January 4, 1978 ..... A-1

Simmons v. Wetherall, et al.
Superior Court, Docket No.
CV 70-163875 Supplemental Judgment
June 2, 1978 ..... A-6

Chart of Litigation A-17

Simmons v. Wetherall, et al
Supreme Court
No. PSC 91-0549
Order, May 21, 1992 ..... A-22

Simmons v. Frankel, U.S. Court
of Appeals - Second Circuit
No. 92-6208 - Order - Feb. 23, 1993 ..... A-24

No. 163875

AUGUSTUS J. SIMMONS of Windsor Locks : SUPERIOR COURT

vs. : HARTFORD COUNTY

HORACE B. WETHERALL of Wethersfield
Deputy Commissioner, Department of Transportation of the State of Connecticut : January 4, 1978

Donald J. Lynch of New Britain
Director of Bureau of Aeronautics
Department of Transportation of the State of Connecticut; and
State of Connecticut

Present Hon. Louis Shapiro, State Trial Referee.

This section by writ and complaint dated January 5, 1970 claiming money damages, came to this Court on the First Tuesday of February, 1970, and thence to December 13, 1977 when this action was consolidated with the following cases:

No. 202121	State of Connecticut vs. Augustus J. Simmons
No. 140965	State of Connecticut vs. Anastasia Simmons, Augustus J. Simmons and Charles Simmons;
No. 199230	Augustus J. Simmons vs. Samuel Kanell, et al; and
No. 162923	Augustus J. Simmons vs. Frank C. Parizek, et al;

and said cases were referred to the undersigned and thence to the present time, when the parties appeared and stipulated as follows:

1) That any Judgment of this Court is Case No. 202121, State of Connecticut vs. Augustus J. Simmons; Case No. 140965, State of Connecticut vs. Anastasia Simmons, Augustus J. Simmons and Charles Simmons; Case No. 199230 Augustus J. Simmons vs. Samuel Kanell, et al; and Case No. 162923, Augustus J. Simmons vs. Frank C. Parizek, et al, be reopened and set aside.

2) That any temporary or permanent injunctive relief ordered by the Court in any of the said aforementioned matters be dissolved.

3) That on or about November 12, 1964, Augustus J. Simmons was the owner of three parcels of land located in the Town of Granby, County of Hartford, adjacent to Bradley International Airport know as Parcels A & C on a map entitled "Property of Anastasia Simmons, East Side - Rainbow Road, East Granby, Connecticut Scale: 1 in = 60 feet. Date October 1964, W.M. Alford Civil Engineer, Windsor, Connecticut A.J.S." which map is on file in the Town Clerk's office in said Town of East Granby together with a third piece of parcel of land known as Parcel D located on the northeasterly side of Route #20 in the Town of East Granby, County of Hartford, as described on a map entitled "Town of East Granby - Map showing property of Dept. of Transportation of the State of Connecticut - Rainbow Road - Route 20 Scale: 1 in = 40 feet. Date January, 1978, Karl F. Crawford, Transportation Chief Engineer" which map is on; file in the Town Clerk's Office in said Town of East Granby, and hereafter referred to as "Parcel D".

4) That on or about November 12, 1964, the State of Connecticut appropriated Parcels C and D and a portion of Parcel A and became the lawful owner thereof subject to just. compensation due Augustus J. Simmons. The description of said parcels and the portion of Parcel A retained by Augustus J. Simmons is set forth in a Stipulation for Judgment dated January 4, 1978.

5) That fair and just compensation due Augustus J. Simmons from the State for said parcels as of the date hereof, is $385,600 of which the sum of $95,600 is for counsel fees.

6) That all Claims in the above-mentioned cases and this action against individual defendants be denied.

7) That a Judgment entered in this matter be a full and final settlement between the parties of any and all claims and disputes concerning said parcels of land and any and all other claims contained in the above consolidated cases.

The Court, having heard the parties finds that on November 12, 1964, Augustus J. Simmons had the record title to said parcels of land, and the State entered thereon, appropriated the same to its own use,

WHEREUPON, it is ORDERED

1) That any Judgment of his court in Case No. 202121, State of Connecticut vs. Augustus J. Simmons; Case No. 140965, State of Connecticut vs. Anastasia Simmons, Augustus J. Simmons and Charles Simmons; Case No. 199230 Augustus J. Simmons vs. Samuel Kanell, et al;

and Case No. 162923, Augustus J. Simmons vs. Frank C. Parizek, et al, be reopened and set aside;

2) That any temporary and/or permanent injunction ordered by the Court in any of the aforementioned consolidated matters be dissolved;

And it is Adjusted; that the State of Connecticut became the lawful owner of said parcels on November 12, 1964 subject to fair and just compensation due Augustus J. Simmons; that said Augustus J. Simmons recover from the State of Connecticut the sum of $385,600 as fair and just compensation for said parcels, without costs; that Judgment for the individual defendants in all of the consolidated cases be entered without costs; and that the files in the consolidated cases, be and are hereby sealed in their entirety and may not be reopened except an order of the undersigned of the Superior Court.

Execution on this judgment is stayed until April 21, 1978 after which time interest shall run at the statutory rate.

/s/ Louis Shapiro
Louis Shapiro
State Trial Referee

Approved
AUGUSTUS J. SIMMONS

By/s/
Rogin, Nassau, Lassman & Hirtle

State of Connecticut
CARL R. AJELLO
Attorney General

By/s/
Assistant Attorney General

Received June 2, 1978
at 1:48 A.M.

By/s/_____
/Asst. Town Clerk

NO. 16375

AUGUSTUS J. SIMMONS : SUPERIOR COURT

V. : HARTFORD COUNTY

HORACE B. WETHERALL ET AL : JUNE 2, 1978

Present: Hon. Louis Shaprio, State Trial Referee

SUPPLEMENTAL JUDGMENT

This action by writ and complaint dated January 5, 1970 claiming money damages, came to this Court on the first Tuesday of February, 1970, and thence to December 13, 1977, when this action was consolidated with the following cases:

No. 202121	State of Connecticut v. Augustus J. Simmons;
No. 140965	State of Connecticut v. Anastasia Simmons, Augustus J. Simmons and Charles Simmons;
No. 1992230	Augustus J. Simmons v. Samuel Kannell, et al; and
No. 162923	Augustus J. Simmons v. Frank C. Patizek, et al;

and said cases were referred to the undersigned and thence to January 4, 1978, when the parties appeared and stipulated as to judgment as on file and thence to the present time when the parties appeared on the defendants' motion for execution on judgment.

The Court, having heard the parties, finds that Augustus J. Simmons has refused to perform according to a

stipulation for judgment and judgment dated January 4, 1978, and further finds that the defendants, Commissioner of Transportation and State of Connecticut, have offered and continue to offer to perform their obligation in accordance with said judgment.

The Court finds that taxes in the amount of $8,761.29, including interest, are due and owing to the Town of East Granby.

The Court, having heard evidence of an examination of the land records of the Town of East Granby, further finds that the following persons claim to have an interest in said premises by virtue of liens or encumbrances placed against said premises in accordance with the land records of said Town.

Vol. & Page	Parcel	Grantee	Instrument	Date	Amount
54/607	A	Jerome H. Diamond	Mtg.	7/9/73	$ 20,000
55/690	A	Jerome H Diamond	Mod. of Mtg.	6/20/74	-----
55/692	A	Jerome H. Diamond	Mtg.	6/27/74	$ 5,100
55/731	A.	Thomas P. Byrne	Mtg.	7/8/74	$ 4,000
57/62	ABC	Leonidas D. Simmons	L/P	3/3/76	Divorce
57/385	ABC	C.B.T.	Judg.	6/11/76	$ 962.97
57/426	ABC	Htfd Nat'l	Attach	6/21/76	$ 2,625
58/95	C	Leonard Allaire, et al	Judg.	3/15/77	$11,104
58/221	C	Patsy Valente, et al	Attach	4/28/77	$ 3,000
58/301	A	Angelo Roncari	Lsc.	5/24/77	-----

Vol. & Page	Parcel	Grantee	Instrument	Date	Amount
59/253	C	Patsy Valente, et al	J/L	3/7/78	$ 2,490
59/263	C	Patsy Valente, et al	L/P	3/13/78	$ 3,000
59/266	C	Leonard Allaire, et al	L/P	3/13/78	$13,000
59/233	Portion of Parcel A	Westside Vallet Parking, Inc.	Lsc.	3/16/78	
59/419	AC	David B. Salzman, et al	Attach.	4/20/78	$105,000

WHEREUPON, IT IS ORDERED

1) That all encumbrances be removed and that title to the premises described in Exhibit A, attached hereto, together with covenants described in Exhibit B, attached hereto, against the land described in said Exhibit D is an are vested in the State of Connecticut in accordance with the judgment entered herein.

2) That the State of Connecticut pay to the Clerk of the Superior Court for Hartford County the sum of $385,600 in accordance with the provisions of said judgment.

3) That the Clerk of said Court pay to the tax collector together with accrued interest, lien, and release fees for the Town of East Granby the sum of $8,761.29 from the sum deposited.

4) That pursuant o Section 52-484 and/or Section 47-31 of the General Statutes, as the Court may deem applicable, the parties, encumbrancers and lienors described herein be and are cited to appear before the Court with

proof of the amount and validity of their liens or encumbrances, that the Clerk make payment to said parties in accordance with the equities in said balance as determined by further order of the Court and that the balance thereafter, if any, be paid to the plaintiff.

/s/Louis Shapiro
Louis Shapiro
State Trial Referee

EXHIBIT A

PARCEL I

A certain piece or parcel of land, containing 5.97 acres situated in the said Town of East Granby on the northeasterly side of Route #20, also known as Rainbow Road, and also known as Parcel C on a map entitled: "Property of Anastasia Simmons east side - Rainbow Road, East Granby, Conn. W.M. Alford Civil Engineer Windsor Conn. Scale 1 inch = 60 ft. October 1964", which map is on file in the Town Clerk's Office in said Town of East Granby and being more particularly bounded and described as follows:

Beginning at a point in the northeasterly side of Route #20 in the Town of East Granby which point is Six Hundred Ninety-Three (693) feet southeasterly from the southeasterly corner of land now or formerly of Charles Comer, as measured along the northeasterly line of Route #20;

Thence N 20o 27' 30" E along land now or formerly of Charles A. Simmons, Eight Hundred Sixty and Forth-Six One-Hundredths (860.46) feet to a point;

Thence S 29o 08' 50" E along land now or formerly of the State of Connecticut, One Hundred Sixty-Three and Seventy One-Hundredths (163.70) feet to a point;

Thence S 22o 23' 40" W along land now or formerly of the State of Connecticut, Eighty-One and Twenty-Seven One-Hundredths (81.24) feet to a point;

Thence S 09o 18' 30" W along land now or formerly of the State of Connecticut, Fifty-Nine and Forty-Seven One-Hundredths (59.74) feet to a point;

Thence S 02° 13' 40" E along land now or formerly of the State of Connecticut, Ninety-One and Fifty-Five One-Hundredths (91.55) feet to a point;

Thence S 05° 06' 30" W along land now or formerly of the State of Connecticut, One Hundred Three and Seventy-Nine One-Hundredths (103.79) feet to a point;

Thence S 09° 29' 00" E along land now or formerly of the State of Connecticut, Seventy-Three and One One-Hundredths (73.01) feet to a point;

Thence S 03° 59' 20" W along land now or formerly of the State of Connecticut, One Hundred Seventeen and Four One-Hundredths (117.04) feet to a point;

Thence S 16° 13' 10" W along land now or formerly of the State of Connecticut One Hundred Forty-Eight and Forty-Four One-Hundredths (148.44) feet to a point;

Thence S 20° 3' 00" W along land now or formerly of the State of Connecticut, Two Hundred Seventy-Four and Forty-Six One-Hundredths (274.46) feet to a point in the northerly line of Route #20;

Thence along a curve whose radius is 1834.86, a distance of Four Hundred Fifty and Ninety One-Hundredths (450.90) feet to the point or place of beginning.

PARCEL II

Said parcel as hereinafter described is shown on a map entitled: "Town of East Granby Map showing Property of Department of Transportation Rainbow Road - Route #20 Scale 1"=40' Karl F. Crawford Transportation Chief Engineer - Bureau of Highways January, 1978", which map is on file in the East Granby Town Clerk's Office.

A certain piece or parcel of land located on the northeasterly side of Route #20 in the Town of East Granby, County of Hartford and State of Connecticut,

containing 1.12 acres, more or less, bounded and described as follows:

Beginning at the intersection of a former town road, a/k/a Bush Road and Old Route #20 approximately 348 feet from the East Granby-Windsor town line as measured along the northerly line of Old Route #20;

Thence proceeding westerly along highway line known as Old Route #20 as shown on said map, a distance of 522 feet, more or less;

Thence in a northwesterly direction a distance of 66 feet more or less to other land of Simmons;

Thence in an easterly direction a distance of 420 feet, more or less to the center of a former town road, a/k/a Bush Road;

Thence southeasterly along the center line of a former town road, a/k/a Bush Road, a distance of 230 Feet, more or less to the point of beginning.

PARCEL III

A certain piece or parcel of land situated in the Town of East Granby, County of Hartford and State of Connecticut, consisting of 2.2 acres, more or less, as shown on a certain map entitled: "Town of East Granby Map showing Property of Dept. of Transportation of The State of Connecticut Rainbow Road - Route 20 Scale 1"=40' January 1978 Karl F. Crawford Transportation Chief Engineer - Bureau of Highways Revised 2-24-73 Town No. 39-Misc. Project No. 5001 Serial No. 17 & 17A Sheet 2 of 2", which map is on file in the Town Clerk's Office in said Town of East Granby, and being more particularly bounded and described as follows:

NORTHERLY: by land of the State of Connecticut(Dept. of Transportation) as

shown on said map, One Hundred Seventy-Four (174) feet, more or less;

EASTERLY: by land of the State of Connecticut (Dept. of Transportation) as shown on said map, Four Hundred Twenty-Five (425) feet, more or less;

SOUTHERLY: by land now or formerly of Augustus J. Simmons, Three Hundred Thirty-Eight (338) feet, more or less; and

WESTERLY: by land now or formerly of Augustus J. Simmons, Three Hundred Seventy-Eight (378) feet, more or less.

EXHIBIT B

A certain piece or parcel of land bounded and described on a map entitled "Town of East Granby - Map showing property of Augustus J. Simmons - Rainbow Road - Route 20 - Scale: 1 in. = 40 feet. Dated February 2, 1978, Karl F. Crawford, Transportation Chief Engineer" which map is on file in the Town Clerk's Office in said Town of East Granby, and hereafter referred to as "Retained Premises".

Augustus J. Simmons convenants with the State of Connecticut that, with regard to the "Retained Premises", the following covenants and restrictions shall run with the land and shall be effective so long as Bradley International Airport or its successor in title or name, continues to operate as a State or Federal Airport:

A. Height Restriction

No building, tree, tower, antenna, smokestack or flagpole, or any other structure or growth, natural or man-made, shall be allowed above the maximum elevation of 215.5 feet above sea level.

B. Lighting

No exterior lighting will be constructed or installed unless said lighting conforms to Federal standards in force at all times. Said standards are presently set forth in 14 Code of Federal Regulations Sections 77, et seq. Notice of any proposed construction shall be given to the Commissioner of Transportation at the same time it is given to the Federal Aviation Administration. In the event that prior approval from the Federal Aviation Administration, for this construction is required by 14 C.F.R. Sections 77, et seq. copies of said request and approval shall be sent to the Commissioner of the Department of Transportation for the State of Connecticut.

C. Rights of First Refusal

The State of Connecticut shall have the right of first refusal in the event Grantor shall desire to sell the "Retained Premises". Such first refusal, however, shall be subject to the following conditions:

a) Grantor shall give to State of Connecticut written notice which notice shall state the terms and conditions of a bona fide written offer to the Grantor from a third party.

b) State of Connecticut shall have the right to purchase said "Retained Premises" by notifying the Grantor in writing within 90 days of receipt by State of such written offer. Such purchase by State shall be on the same terms and conditions as the offer received by Grantor from such third party.

c) In the event that State shall exercise its right to purchase in accordance with this paragraph, notice of its intent to exercise as provided in paragraph (b) shall be accompanied by a certified check to the order of Augustus J. Simmons heirs or assigns in the amount of 10% of the purchase price which shall be a deposit toward the purchase price of said "Retained Premises".

d) The transfer of title in accordance with the terms of such offer shall take place on or before thirty (30) days after receipt by Grantor of notice of State's intent to exercise its right of first refusal.

AND I, Augustus J. Simmons, for myself, my heirs and assigns forever, agree that the Premises owned by the State of Connecticut shall be used for aeronautic purposes, including the operation of all types of aircraft, both conventional propeller driven and jet powered, as well as any other type of aircraft not heretofore operated from the airport, including but not limited to helicopters, and I further

covenant and agree for myself, my heirs, administrators, and assigns that neither I nor any successor in interest of mine, will have any cause, claim or right of action against the State of Connecticut, or any of its successors in interest, as a result of aeronautics operations on, over or through the Premises owned by the State of Connecticut as the result of noise resulting from said aircraft operations as it may affect the Retained Premises. This covenant and agreement shall also run with the land and shall be construed as a real covenant running with the land unless and until such time as, by agreement with the State of Connecticut, its successors assigns, this covenant is terminated.

AND I, Augustus J. Simmons, for myself, my heirs and assigns forever and my successors in interest specifically waive and relinquish any rights in law or equity relative to said noise from aeronautics operations relating to the Retained Premises.

CASES INITIATED BY AUGUSTUS J. SIMMONS POST 1978 JUDGMENT AND SUPPLEMENTAL JUDGMENT AFFIRMED IN SIMMONS V. WETHERALL 180 CONN. 587 430 A.2d 1296 (1980)

I. **STATE COURT PROCEEDINGS:**

Superior Court	Appellate Court	Supreme Court	United States Supreme Court
1. Simmons v. Wetherall CV-70-163875, et al. Motion for Declaratory Relief Feb. 1984 dismissed Edelberg, J.	3 Conn. App. 672(1985) Affirmed	---	----
2. Simmons v. Burns CV-86-312557 Jan. 1986 dismissed Stoughton, J.	9 Conn. App. 802(1986) Affirmed	201 Conn.815(1986) Pet.Cert.denied	---
3.Simmons v. Burns, et al. CV-87-0334855 Aug. 1987 Dismissed, Norko, J. (removed to U.S. District Court--See H-87-732(JAC)below)	---	---	---

Superior Court	Appellate Court	Supreme Court	United States Supreme Court
4. Simmons v. State of Conn., et al. CV-89-700313 July, 1989 dismissed	24 Conn.App. 801(1991) Affirmed	218 Conn. 901(1991) Pet. Cert. denied	90-1807 Cert. denied Oct.7, 1991
5. Simmons v. State of Conn. CV-90-701038 May 1990 dismissed P.B.Sec. 111 sanctions N. O'Neill, J.	---	---	---
6. Simmons v. Wetherall CV-70-163875, et al. Motion of Referral to Referee	A.C. 10918 Orders (unreported) 1.Appeal Dismissed 2.Sanctions Imposed (injunction) April 3, 1992	222 Conn. 906(1992) Pet.Cert. Denied	---
7. Simmons v. Frankel CV-92-05053988S December 1991 Dismissed Sanctions imposed (injunction) May 1992, Satter, J.	---	---	---

Superior Court	Appellate Court	Supreme Court	United States Supreme Court
8. Simmons v. Wetherall CV-70-163875, et al. Motion for Impeachment December, 1995 denied Sheldon, J.	A.C. 15481 Order dismissed (sua sponte) March 20, 1996	Cert. Denied May, 1996	
9. Simmons v. Wetherall CV-70-163875 Plaintiff's Request for Hearings On Various Motions - Jan. 3, 1997 Denied, Jan. 31, 1997, Langenbach, J.			
10. State of Connecticut v. August J. Simmons CR97-106221, CR97-0104930, CR97-0105048 Motion to Disqualify Dismiss, "Pack the Bags" Of the State Attorney's Office - May 8, 1998 Denied			
11. Simmons v. Wetherall CV-70-163875 Plaintiff's Motion to Dismiss-July 8, 1998 Denied			
12. Simmons v. Wetherall CV-70-163875	---	HHD-CV-70-163875 Order Dismissed Sept. 15, 1998	Pet. Cert. Pending Dec., 1998

II. **FEDERAL COURT PROCEEDINGS:**

United States District Court District of Connecticut	United States Court of Appeals for the Second Circuit	United States Supreme Court
1.Simmons v. Powers		
H-81-778 (JAC))		
1981)		
)		
2.Simmons v. United States of America, et al.		
H-83-225 (TEC))		
1983)		
Consolidated		
-dismissed	83-6257(1983)	83-1833
Aug. 16, 1983	Affirmed	Cert. denied
3.Simmons v. United States of America, et al.		
H-85-45 (MJB)	8506087 (1985)	---
1985	Affirmed	
Dismissed	notice of future sanctions	
4.Simmons v. Burns, et al.		
H-87-732 (JAC)	88-6093(1988)	88-693
1987	Affirmed	Cert.
Dismissed	Sanctions	denied
plaintiff enjoined	imposed	Nov. 28,
from further		1988
federal district court actions		

United States District Court District of Connecticut	United States Court of Appeals for the Second Circuit	United States Supreme Court
5.Simmons v. Frankel, et al.		
	92-6208(1993)	92-1762
292 CV 00395(PCD)	Affirmed	Cert.
June 1992 Dismissed	Sanctions	denied
Sanctions	imposed	Oct. 4,
imposed - $2,000		1993
6.Simmons v. Hinson, et al.		
394 CV 00778(AHN)	94-6156(1994)	94-1651
May 1994	Affirmed	Cert.
Dismissed with	Sanctions	denied
prejudice	imposed	June 5,
	-$5,000	1995
7.Simmons v. Burns		
395 CV 02198(RNC)	96-7336 (1996)	
October 1995	Appeal dismissed,	
Dismissed	(sua sponte)	

SUPREME COURT
STATE OF CONNECTICUT

NO. PSC-91-0549

Augustus J. Simmons

v.

Horace Wetherell

ORDER ON PETITION FOR CERTIFICATION TO APPEAL

On consideration of the petition by the plaintiff for certification to appeal from the Appellate Court, it is hereby ordered that said petition be, and the same is hereby denied.

BY THE COURT,

/s/Alan M. Gannuscio
ASSISTANT
CLERK-APPELLATE

Dated: May 21, 1992

Notice to: 5/21/92
Clerk, Superior Court, Hartford - 163875
Clerk, Appellate Court
Lasky & Witt
Augustus J. Simmons, pro se
Arnold K. Shimelman, Assistant Attorney General

Otto P. Witt in support of petition; Arnold K. Shimelman, Assistant Attorney General, in opposition.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Cirucit, held that the United States Courthouse in the City of New York, on the 23rd day of February, one thousand nine hundred and ninety three.

Present:

Honorable John M. Walker, Jr.,
Honorable Joseph M McLaughlin,
Circuit Judges
Honorable Charles L. Brieant,
*Chief District Judge**

AUGUSTUS J. SIMMONS,
Plaintiff-Appelant

v.

ORDER
No. 92-6208
(Filed Febr. 23, 1993)

EMIL H. FRANKEL, Commissioner of Transportation, BARRY L. HARRIS, Administrator, Federal Aviation Administrator, HENRY J. HATCH, General Chief Engineer U.S. Army Corps. of Engineers, JOHN J. BARTIZEK, District

---

*Chief Judge Charles L. Brieant, United States District Court for the Southern District of New York, sitting by designation.

Clerk, Metropolitan District Commission, UNITED STATES OF AMERICA, STATE OF CONNECTICUT, JOHN J. COLLINS, Lt. Col., Administrator, FAA,

Defendant-Appellees.

Appeal from the United States District Court for the District of Connecticut.

This cause came to heard [sic] on the transcript of record from the United States District Court for the District of Connecticut (Dorsey, J.) and was argued by appellant, while counsel for appellees relied on their submissions.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged and decreed that the order of said district court be it hereby is AFFIRMED, and appellant is assessed doudble court costs.

August J. Simmons, *pro se*, appeals from an order of the United States District Court for the District of Connecticut (Dorsey, J.), dismissing his complaint *sua sponte* and ordering Simmons to pay $2000 in fines.

On June 5, 1992, Simmons brought an action, pursuant to 42 U.SC. § 1983, alleging various constitutional violations arising from Connecticut's acquisition of land owned by Simmons. the district court concluded that Simmons was attempting to reassert federal constitutional and statutory claims that were fully adjudicated in prior proceedings in violation of an injunction issued against him,

and dismissed his complaint *sua sponte* on July 14, 1992. The court also ordered Simmons to pay fines in the amount of $1000 to the State of Connecticut and $1000 to the United States.

The long history of this litigation began in 1964, when the State of Connecticut attempted to condemn property in East Granby, Connecticut, then owned by the Simmons's family, to expand what is now the Bradley International airport. Simmons filed various state and federal actions, later consolidated in Connecticut Superior Court, alleging that the State illegally occupied portions of his land and challenging the State's attempt to gain title to the property. On January 4, 1978, a judgment was entered, pursuant to a stipulation betwen the parties, providing that the State would take title to certain parcels of Simmons' land, in return for which the State would pay Simmons $385,000. The stipulation further provided that the "judgment entered in this matter [shall] be a full and final settlement between the parties of any an all claims contained in the above consolidated cases." Howerver, six months later Simmons moved to open the judgment claiming ineffective assistance of counsel. This request was denied and the denial was affirmed on appeal. *Simmons v. Wetherall*, 180 Conn. 587 (1980) (per curiam).

Not dissuaded by the final judgemnt granting title of the disputed real property to the State of Connecticut, Simmons continued to pursue the issue. Simmons filed seven state and five federal proceedings after the 1978 stipulation was certified. Then in a 1988 order, Judge Cabranes enjoined Simmons from filing "any state or federal claims in any federal court against any of the defendants named in the complaint in this lawsuit if such lawsuit related to his alleged ownership" of the disputed real property. Affirming Judge Cabranes' s order in all respects, this Court

warned that any violation of that injunction could be punished as contempt of court and imposed double court costs against Simmons. *Simmons v. Burns*, No. 88-6093 (2d Cir. Oct. 5, 1988) (unpublished summary order).

Despite this Court's attempt to stem the flow of vexatious litigation by Simmons, we are confronted once again with an attempt by him to litigate a matter barred by resjudicata. Notwithstanding Simmons's attempt to circumvent the injunction by changing the named defendants, the instant complaint clearly relates to Simmons's ownership of the East Granby land. Thus, Simmons has violated Judge Cabranes's injunction. Furthermore, even without the injuction, Judge Dorsey's dismissal of the complaint *sua sponte* would be affirmed based on res judicata grounds.

Both the state and federal defendants have asked the district court to impose snctions on Simmons in order to detr him from continuing his attempts to reopen this litigation. *Pro Se* litigants are subject to sancitons under Fed. R. Civ. P.11. *See Maduakolam v. Columbia Univ*, 866 F.2d 53, 56 (2d Cir. 1989). Furthermore, this Court has not hesitated to impose sanctions on *pro se* litigants when they become particularly vexatious. *See Sassower v. Field*, 973 F.2d 75 (2d Cir. 1992) (upholding sanction of $93,350 against vexatious plaintiff).

The district court's order dismissing *sua sponte* Simmons's complaint and imposing $2,000 in fines is hereby

AFFIRMED. Furthermore, we hereby assess double court costs against Simmons psursuant to Fed.R.App.P.38.

/s/ John Walker
Hon. John M. Walker, JR.,
U.S.C.J.

/s/ Joseph M. McLaughlin
Hon. Joseph M. McLaughlin,
U.S.C.J.

/s/ Charles Brieant
Hon. Charles L. Brieant,
U.S.D.J.

N.B. THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND SHOULD NOT BE CITED OR OTHERWISE RELIED UPON IN UNRELATED CASES BEFORE THIS OR ANY OTHER COURT.

MANDATE

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 23rd day of February, one thousand, nine hundred and ninety three.
Present:

Honorable John M. Walker, Jr.,

Honorable Joseph M. McLaughlin,
Circuit Judges,

Honorable Charles L. Brieant,
Chief District Judge.

AUGUST J. SIMMONS,
Plaintiff-Appellant,

v.

ORDER
No. 92-6208
(Filed Febr. 23, 1993)

EMIL H. FRANKEL, Commissioner of Transportation, BARRY L. HARRIS, Administrator, Federal Aviation Administrator, HENRY J. HATCH, General Chief Engineer U.S. Army Corps. of Engineers, JOHN J. BARTIZEK, District Clerk, Metropolitan District Commission, UNITED STATES OF

*Chief Judge Charles L. Brieant, United States District Court for the Southern District of New York, sitting by designation.

AMERICA, STATE OF CONNECTICUT,
JOHN J. COLLINS, Lt. Col,
Administrator, FAA,
Defendant-Appellees.

Appeal from the United States District Court for the District of Connecticut.

This cause came to heard on the transcript of record from

Dismissed sua sponte.